

REMARKS

The Office Action mailed June 3, 2004 has been received and the Examiner's comments carefully reviewed. Claims 21-34, 45-51 and 53-61 have been allowed. Applicants thank the Examiner for this notification. Claims 1, 36, and 38 have been amended. Claims 62-68 have been added. No new subject matter has been added. Claims 1, 2, 4-34, 36-39, 45-51 and 53-68 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

Rejections Under 35 U.S.C. §102

The Examiner rejected claims 1, 2, 5, 6, 16-17 and 36-39 under 35 U.S.C. §102(e) as being anticipated by Letendre et al. (U.S. Patent 6,267,783 B1). Applicants respectfully traverse this rejection, but have amended claims 1, 36 and 38 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

Independent claims 1, 36, and 38 recite a system including an implant having a first interlock structure and an elongated member having a second interlock structure. At least a portion of each of the first and second interlock structures are positioned at most 5 millimeters from a cell defining region of the implant.

The Examiner stated that Letendre discloses a portion of an interlock structure (i.e. the leg 20) that is located at most 5 millimeters from a cell defining region of the implant. Letendre, however, does not disclose a second interlock structure, as characterized by claims 1, 36, and 38, that is located at most 5 millimeters from a cell defining region of the implant. Rather, the legs 20 have flanges 28 that interconnect with grooves 54 on an inner shaft 60. The grooves 54 of the inner shaft 60 are not located at most 5 millimeters from a cell defining region of the implant; instead, the grooves 54 are located at a distance greater than 5 millimeters from the cell defining region of the implant.

At least for this reason, Applicants respectfully submit that independent claims 1, 36, and 38, and depend claims 2, 5, 6, 16-17, 37, and 39 are patentable.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 4 and 30 under 35 U.S.C. §103(a) as being unpatentable over Letendre et al. (U.S. Patent 6,267,783 B1) in view of Johnson et al. (U.S. Patent 5,817,102). Applicants respectfully traverse this rejection.

Claim 4 depends upon claim 1. In view of the remarks regarding independent claim 1, further discussion regarding the independent patentability of dependent claim 4 is believed to be unnecessary. Applicants submit that dependent claim 4 is in condition for allowance.

Claim 30 depends upon claim 29. The Examiner indicated that independent claim 29 was allowed. Applicants therefore submit that claim 30 is also allowable.

Allowable Subject Matter

The Examiner allowed claims 21-34, 45-51 and 56-61. The Examiner also objected to claims 12-15, 18-20, 26-28, 34, 48 and 49, but indicated that claims 12-15, 18-20, 26-28, 34, 48 and 49 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification. (It is noted that claims 26-28, 34, 48 and 49 depend upon allowed independent claims.)

New claim 62 incorporates the subject matter of objected-to claim 12 and base claim 1. New claims 62-65 depend upon claim 62 and correspond to objected-to claims 13-15. Each of new claims 66-68 incorporates the subject matter of objected-to claims 18-20, respectively, and base claim 1. Applicants respectfully submit that new claims 62-68 are in condition for allowance.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 1, 2, 4-34, 36-39, 45-51 and 53-68) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.



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Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Karen A. Fitzsimmons". The signature is written in a cursive style and is positioned above a horizontal line.

Karen A. Fitzsimmons
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KAF:cjm